criticized by the court in *Spearman* v. *McCrary,* 4 Ala. App. 473, 482; "the rule of non-liability which is claimed to exist in such a case does not involve the denial of the right to be compensated in damages for an injury caused by fright, but merely has the effect of making the right to recover such damages dependent upon the existence of a feature of wrongful occurrence which confessedly may be quite trivial and amount to no more than a merely technical breach of duty, resulting in no appreciable harm to him, besides being in itself a thing the existence of which may often be shown by evidence even more readily fabricated and less easy to refute than that in reference to the injury attributable to mental fright or shock." The same criticism would apply against the case which said that "dust in the eyes" would be sufficient physical impact. *Porter* v. *Lackawanna Ry.,* 73 N. J. L. 405. In a word, have not the courts actually allowed recovery for fright in the cases of nominal physical impact and the cases of willful or intentional fright? The courts have admitted that "wounding a man's feelings is as much actual damage as breaking his limbs." *Head* v. *Ga. Pac. Ry.,* 79 Ga. 358; and that "it would be a reproach to the law if physical injuries might be recovered for, and not those incorporeal injuries which would cause much greater suffering and humiliation." *Douglas* v. *Stokes,* 149 Ky. 506, 509. Since, as the court says in *Spearman* v. *McCrary* (*supra*), "we know of no legal reason for denying that any agency is the proximate cause of a given result when it is as a matter of fact," then why not throw aside fictions and regard mental suffering standing alone as a legal wrong on which an action for damages may be based. But see *St. Louis Etc. Ry.,* v. *Taylor,* 84 Ark. 42. A. J. L.

Implied Condition Involving Impossibility of Performance.—Early in 1914 the defendants contracted to sell to the plaintiffs a quantity of Finland birch timber. The practice was to send the timber direct by sea from Finnish ports. Before any timber was delivered the war broke out and the presence of German warships in the Baltic made the direct shipment by water impossible. The contract contained no war, *force majeure* or suspension provision. *Held,* that the contract was not dissolved, and the defendants were liable for damages for non-delivery of the timber. *Blackburn Robbin Co., Lim.* v. *Allen & Sons, Lim.* (1918) 87 L. J. K. B. 1085.

The doctrine of implied conditions has been brought before the English courts more prominently since the outbreak of the war than ever before, by reason of the many causes of impossibility of performance produced by the war. On the whole it is clear that the courts of England have not allowed themselves to be drawn away from established rules in spite of the great pressure of the war emergency, thus exhibiting in a striking way the judicial poise which has always been characteristic of British judges.

The leading recent case was *Krell* v. *Henry* [1903] 2 K. B. 740, which held that a contract for hiring a flat on Pall Mall for the two days on which it was announced that the coronation procession would pass along Pall Mall, was subject to the implied condition that the procession should take place, though nothing was said about it in the contract. The language of that case

was rather broad, basing the dissolution of the contract on impossibility of performance due to the "non-existence of the state of things assumed by both contracting parties as the foundation of the contract," whether this state of things was mentioned in the contract or not. The cases arising out of the war have not tended to enlarge that language. In *Horlock* v. *Beal* [1916] 1 A. C. 486, the House of Lords applied the rule to the case of a seaman's contract of service, where the ship and crew were interned in a German port, and held that the contract was dissolved. In *F. A. Tamplin Steamship Co.* v. *Anglo-Mexican Peteoleum Products Co.* [1916] 2 A. C. 397, it was held that the requisition of a ship by the government for war purposes did not put an end to a five years' contract for the use of the ship, though LORDS HALDANE and ATKINSON dissented and LORD LOREBURN said he would be of a different opinion if it were established (as events doubtless did establish) that the ship would be used by the government for substantially the remainder of the five years, for in such an event the contracting parties would have been so placed "that as sensible men they would have said, 'if that happens, of course it is all over between us.'" In *Shipton, Anderson & Co.* v. *Harrison Brothers & Co.* [1915] 3 K. B. 676, a contract for the sale of specific wheat was held to be dissolved by implied condition when the wheat was requisitioned by the government. In *Metropolitan Water Board* v. *Dick, Kerr & Co.* (1918) 87 L. J. K. B. 370, a contract for the construction of certain reservoirs was stopped and the plant and materials sold by order of the Minister of Munitions, and it was held by the House of Lords, on very full consideration, that the impossibility of performance created by law excused the contractor from performance.

In the principal case the court was unable to say that the continuance of the normal mode of shipping timber from Finland was a matter which both parties contemplated as necessary for the fulfillment of the contract. The buyers were not interested in the means or the route by which the sellers should make delivery, and it appeared that they were in fact unaware how the timber was to be shipped or whether it might not be already held in stock in England. The rule was doubtless properly applied. It is a rule which must be applied with caution, for "if it be extended too far," as said by MCCARDIE, J., in giving judgment in the court below, "it may tend to sap the foundations of contract law as they now exist." E. R. S.

DEEDS TO TAKE EFFECT UPON DEATH OF GRANTOR.—That instruments in form of wills may be effective as deeds of conveyance is clear. If a present interest is passed and execution is complete (which includes delivery), the instrument must take effect as a deed. On the other hand, if no interest is to vest until or after death of the maker and there has been no complete execution as a deed, the instrument, if operative at all, must take effect as a will. Difficulties arise when there is a fully executed deed, which, however, is to be postponed in its complete operation until the death of the grantor.

Where the grantor delivers the deed to a third party to be handed by him to the grantee on the grantor's death there is substantial agreement among